



# UNITED STATES PATENT AND TRADEMARK OFFICE

HC  
UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,531	11/28/2000	Ari Derowe	088/01925	5181

26418 7590 06/03/2003

REED SMITH, LLP  
ATTN: PATENT RECORDS DEPARTMENT  
599 LEXINGTON AVENUE, 29TH FLOOR  
NEW YORK, NY 10022-7650

EXAMINER

HO, UYEN T

ART UNIT	PAPER NUMBER
3731	

DATE MAILED: 06/03/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/701,531	DEROWE ET AL.
	Examiner (Jackie) Tan-Uyen T. Ho	Art Unit 3731
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
<b>Period for Reply</b>		
<p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>1</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>		
<b>Status</b>		
<p>1)<input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>28 November 2000</u>.</p> <p>2a)<input type="checkbox"/> This action is FINAL.                    2b)<input checked="" type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>		
<b>Disposition of Claims</b>		
<p>4)<input checked="" type="checkbox"/> Claim(s) <u>1-135, 143-158 and 176-218</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) _____ is/are withdrawn from consideration.</p> <p>5)<input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6)<input type="checkbox"/> Claim(s) _____ is/are rejected.</p> <p>7)<input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8)<input checked="" type="checkbox"/> Claim(s) <u>1-135, 143-158, 176-218</u> are subject to restriction and/or election requirement.</p>		
<b>Application Papers</b>		
<p>9)<input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10)<input type="checkbox"/> The drawing(s) filed on _____ is/are: a)<input type="checkbox"/> accepted or b)<input type="checkbox"/> objected to by the Examiner.</p> <p style="margin-left: 20px;">Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p>11)<input type="checkbox"/> The proposed drawing correction filed on _____ is: a)<input type="checkbox"/> approved b)<input type="checkbox"/> disapproved by the Examiner.</p> <p style="margin-left: 20px;">If approved, corrected drawings are required in reply to this Office action.</p> <p>12)<input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>		
<b>Priority under 35 U.S.C. §§ 119 and 120</b>		
<p>13)<input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a)<input type="checkbox"/> All    b)<input type="checkbox"/> Some * c)<input type="checkbox"/> None of:</p> <p style="margin-left: 20px;">1.<input type="checkbox"/> Certified copies of the priority documents have been received.</p> <p style="margin-left: 20px;">2.<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p> <p style="margin-left: 20px;">3.<input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p> <p>* See the attached detailed Office action for a list of the certified copies not received.</p> <p>14)<input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).</p> <p>a)<input type="checkbox"/> The translation of the foreign language provisional application has been received.</p> <p>15)<input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.</p>		
<b>Attachment(s)</b>		
<p>1)<input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____</p>		<p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____</p>

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

- I. Group I, claim(s) 1-135, drawn to an anastomotic connector for attaching two blood vessels.
- II. Group II, claim(s) 143-158 and 200-205, drawn to a puncher and method for punching a vessel wall.
- III. Group III, claim(s) 176, drawn to a patch for sealing a hole in a blood vessel.
- IV. Group IV, claim(s) 177-181, drawn to a framework for an endoscopic procedure.
- V. Group V, claim(s) 182-199 and 206-218, drawn to method of performing an anastomosis and bypass.

2. The inventions listed as Groups I, II, III, IV, and V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:
  - Groups I, II, III and IV lack the same or corresponding special technical features. The anastomotic connector (Group I), the puncher (Group II),

the patch (Group III) and the framework (Group IV) are distinct because they have different special technical features.

Groups I and V are related as process and apparatus. However, the inventions are distinct because the product (anastomotic connector, Group I) alone is not specifically designed or inherently for carrying out the claimed process (Group V). The process as claimed must be practiced by another apparatus such as the apparatus including a catheter, a guidewire, means for forming a hole in a vessel wall, an implant delivery system and a graft including at least one anastomotic connector, wherein the apparatus does not require an anastomotic connector including special technical features as claimed in the invention of Group I.

Group II and V are related as process and apparatus. However, the inventions are distinct because the product (puncher) alone is not specifically designed or inherently for carrying out the claimed process. The process as claimed must be practiced by another apparatus such as the apparatus including a catheter, a guidewire, an implant delivery system, a graft including at least one anastomotic connector and mean for forming a hole in a vessel wall, wherein the apparatus does not require a puncher that has special technical features as claimed in the invention of Group II.

Group III and V are related as process and apparatus. However, the inventions are distinct because the product (a patch) alone is not

~~957,601,728Y~~ specifically designed or inherently for carrying out the claimed process.

The process as claimed must be practiced by another materially different apparatus such as the apparatus including a catheter, a guidewire, means for forming a hole in vessel wall, an implant delivery system and a graft including at least one anastomotic connector, wherein the apparatus does not require a patch that has special technical features as claimed in the invention of Group III.

Group IV and V are related as process and apparatus. However, the inventions are distinct because the product alone is not specifically designed or inherently for carrying out the claimed process. The process as claimed must be practiced by another materially different apparatus such as the apparatus including a catheter, a guidewire, means for forming a hole in vessel wall, an implant delivery system and a graft including at least one anastomotic connector, wherein the apparatus does not require a framework that has special technical features as claimed in the invention of Group IV.

3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

1. Species 1: Fig. 4A-4D
2. Species 2: Fig. 4E
3. Species 3: Figs. 4F & G
4. Species 4: Figs. 4H & 4I

Art Unit: 3731

5. Species 5: Figs. 4J & 4K
6. Species 6: Figs. 6A-6E
7. Species 7: Figs. 7A & 7B
8. Species 8: Figs. 7E & 7F
9. Species 9: Figs. 7G
10. Species 10: Figs. 7H & 7I
11. Species 11: Figs. 7J & 7K
12. Species 12: Figs. 7L & 7M
13. Species 13: Figs. 7N
14. Species 14: Fig. 7O
15. Species 15: Figs. 7P-7R
16. Species 16: Figs. 7S-7T
17. Species 17: Figs. 7U-7V
18. Species 18: Figs. 8A-8I
19. Species 19: Figs. 8J-8K
20. Species 20: Figs. 8L-8M
21. Species 21: Fig. 8O
22. Species 22: Fig. 8P
23. Species 23: Fig. 8Q-8R
24. Species 24: Figs. 8S-8T
25. Species 25: Fig. 8U-8X
26. Species 26: Fig. 8XA
27. Species 27: Fig. 8XB
28. Species 28: Fig. 8XC
29. Species 29: Figs. 8XD-8XE
30. Species 30: Figs. 8XF-8XH
31. Species 31: Fig. 10M
32. Species 32: 12F
33. Species 33: 12G

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include

Art Unit: 3731

all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

4. There is no generic claim.
5. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: each species has a mutually exclusive technical feature.
6. A telephone call was made to Mr. William Dippert and Maier Fenster on 2/19/2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is (703) 306-3421. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

Art Unit: 3731

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703) 308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



(Jackie) Tan-Uyen T. Ho  
Patent Examiner  
Art Unit 3731  
May 29, 2003